IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 5 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

INDIAN PETROCHEMICALS CORPN. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 5 of 1992
MR MIHIR H JOSHI with MR MANISH R BHATT for Petitioner
MR MANISH J SHAH for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for the opinion of this Court in respect of assessment years 1982-83 and 1983-84 :-

"Whether, the Appellate Tribunal is right in law and on facts in directing the Income-tax Officer to consider the work-in-progress for the purposes of computing relief under Section 80J ?"

2. We have heard Mr Mihir H Joshi, learned counsel for the revenue and Mr Manish J Shah, learned counsel for the respondent-assessee.

3. Our attention is invited to the decision of the Apex Court in CIT vs. Alcock Ashdown and Co. Ltd., (1997) 224 ITR 353 which was also followed in CIT vs Karnataka Power Corporation, 247 ITR 268 for Sec. 80J. In CIT vs. Alcock Ashdown and Co. Ltd. (supra), the Apex Court has taken the view that the cost of the work in progress has to be taken into account in determining the capital employed in the undertaking for the purpose of granting relief to the assessee in terms of Section 84 of the Income-tax Act, 1961.

4. Following the aforesaid decisions, we are of the view that the Tribunal was right in directing the Income-tax Officer to consider the cost of the work in progress for the purposes of computing relief under Section 80J of the Act. Accordingly, our answer to the question referred is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-